



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1998

Ms. Sandra Joseph
Open Records/Disclosure Officer
Comptroller of Public Accounts
State of Texas
Austin, Texas 78774-0100

OR98-2619

Dear Ms. Joseph:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119225.

The Comptroller of Public Accounts (the "comptroller") received the following request for information from the comptroller's audit satisfaction survey forms:

It is my understanding that when a form is returned that contains a complaint or negative feedback it is routed through a separate process that requires an explanation.

I would like to request a copy of these (complaint or negative feedback) forms for the last 30 days. Please understand that we are not interested in the cover letter, but only the form that is completed by the taxpayer.

You assert that portions of the audit satisfaction survey forms are confidential under sections 111.006 of the Tax Code and 74.702 of the Property Code, in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code provides that information which is confidential by law is protected from disclosure under the Open Records Act. Section 111.006 of the Tax Code provides for the confidentiality of certain information obtained during audits or examinations:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b), (d), or (e):

(1) a federal tax return or federal tax return information required to have been submitted to the comptroller with a state tax return or report; and

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

(b) All information made confidential in this title may not be subject to subpoena directed to the comptroller or the attorney general except in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

Section 74.702 of the Property Code also makes confidential information obtained in connection with unclaimed property audits or examinations:

(a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the comptroller, the attorney general, or an authorized agent of either, at any reasonable time, may examine the books and records of any holder.

(b) The comptroller, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not disclose that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or pursuant to an agreement with another state allowing joint audits or the exchange of information obtained under this section.

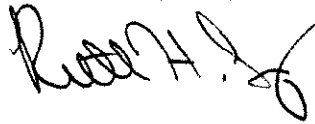
In Open Records Letter No. 96-1612 at 2 (1996), this office agreed with the comptroller that section 111.006 makes confidential "information about a taxpayer's business affairs regardless of whether the comptroller obtained the information by auditing the taxpayer's business or by requesting information in order to render a private ruling." We stated that to rule otherwise "would thwart the legislative intent to protect information about taxpayers' business."

You rely upon Open Records Letter No. 98-0126 (1998) for the proposition that section 74.702 has the same scope and effect for unclaimed property audits as section 111.006 has for tax audits. In Open Records Letter No. 98-0126 at 2, we stated that section 74.702 "makes confidential information obtained from a governmental body regarding the status of unclaimed property in its possession. Thus, the amounts of the assessments due the state are confidential under this provision."

We have reviewed the information you marked as protected from disclosure under section 111.006 of the Tax Code and section 74.702 of the Property Code. We agree the marked information is confidential under these provisions and thus must be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119225

Enclosures: Submitted documents

cc: Mr. Jeb Airey
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(w/o submitted documents; w/copies of Open Records Letter No. 96-1612 (1996)
and Open Records Letter No. 98-0126 (1998))